Edmund Chan Kai Khoon v Abrizah Abdullah & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P–02–971 OF 2004
DENIS ONG, TENGKU BAHARUDIN AND AZMEL JJCA
3 MAY 2007

Civil Procedure — Appeal — Interference by appellate court — Whether appellate court should interfere with findings of facts of trial judge

The plaintiffs and defendant owned substantial shares of Palmco Holdings Bhd ('Palmco'). The defendant was its managing director. In June 1984 Palmco declared a rights issue of three shares for every five shares held at RM1 per share. The plaintiffs, by virtue of being shareholders of Palmco were allotted 2,645,758, 266,812 and 874,744 shares respectively ('the shares'). The directors of Palmco had collectively agreed to subscribe to the full entitlement under the proposed rights issue. In compliance with the arrangement, the plaintiffs' provisional allotment letters were handed over to the defendant as managing director. The defendant's acknowledgement of receipt of the memos was clearly proven by his signature appearing on each of the three memos. It was the plaintiffs' claim that the allotted shares would be returned to the respective plaintiffs upon their acceptance of the same at the price of RM1 per share. Though the plaintiffs on 31 May 1990 had requested the defendant to return the shares to them, the defendant had refused to do so. The plaintiffs sought for a declaratory order that the plaintiffs were the respective owners of the shares. The plaintiffs also asked that the shares be delivered to them by the defendant. The High Court found for the plaintiffs and the defendant appealed.

Held, dismissing the appeal with costs:

(1) The issues in this appeal were purely based on facts. It is trite law that the appellate court would not readily interfere with the findings of facts arrived at by the court of first instance to which the law entrusts the primary task of evaluation of the evidence (see para 18).

(2) The court agreed with the learned judge that this case was 'simple and uncomplicated'. After having carefully scrutinized the facts and circumstances of this case vis-à-vis the findings of facts of the learned judge, the court arrived at the conclusion that his decision should not be disturbed. The plaintiffs' claim against the defendant had been sufficiently substantiated by documentary evidence while the defendant's defence was a bare denial without any document to support it. The defendant's attempt to discredit PW1's evidence and the documents he produced had been correctly rejected by the learned judge (see para 19).

[Bahasa Malaysia summary

Plaintif dan defendan memiliki sebahagian besar saham-saham Palmco Holding Bhd ('Palmco'). Defendan adalah pengarah urusannya. Pada Jun 1984 Palmci mengisytiharkan hak terbitan tiga saham untuk setiap lima saham yang diputuskan pada RM1 sesaham. Plaintif menurut kuasa sebagai pemegang saham Palmco memperuntukkan 2,645,758, 266,812 dan 874,744 saham masing-masing ('saham tersebut'). Pengarah-pengarah Palmco sama-sama bersetuju untuk membeli bagi hak sepenuhnya di bawah hak terbitan yang dicadangkan. Dalam mematuhi perjanjian, plaintif surat peruntukan sementara diserahkan kepada defendan sebagai pengarah urusan. Akuan penerimaan memo defendan dengan jelasnya dibuktikan melalui tandatangannya yang ada disetiap tiga memo. Adalah pernyataan plaintif bahawa saham yang diperuntukkan akan dikembalikan kepada plaintif apabila penerimaan tersebut pada harga RM1 sesaham. Walaupun plaintif pada 31 Mie 1990 telah meminta defendan untuk memulangkan saham tersebut kepada mereka, defendan enggan melakukannya. Plaintif meminta untuk satu perintah deklarasi bahawa plaintif adalah pemilik saham-saham tersebut. Plaintif juga meminta bahawa saham-saham tersebut dihantar kepada mereka oleh defendan. Dapatan mahkamah tinggi berpihak kepada plaintif dan defendan merayu.

Diputuskan, menolak rayuan dengan kos:

(1) Isu-isu dalam rayuan ini hanyalah berdasarkan fakta. Adalah undang-undang yang telah ditetapkan bahawa mahkamah rayuan tidak bersedia untuk campur tangan dengan dapatan fakta yang diperolehi oleh mahkamah yang awal yang mana undang-undang mengamanahkan tugas utama penilaian bukti (lihat perenggan 18).

(2) Mahkamah bersetuju dengan hakim yang bijaksana bahawa kes ini adalah 'mudah dan tidak rumit'. Selepas meneliti dengan cermat fakta dan keadaan kes ini berbanding dengan dapatan fakta hakim yang bijaksana, mahkamah sampai kepada kesimpulan bahawa keputusannya tidak seharusnya diganggu. Tuntutan plaintif terhadap defendan telah cukup disahkan melalui bukti dokumentasi manakala pembelaan defendan hanyalah penafian kosong tanpa dokumen untuk menyokongnya. Percubaan defendan untuk meragukan keterangan PW1 dan dokumen-dokumen yang dikemukakannya dengan betul ditolak oleh hakim yang bijaksana (lihat perenggan 19).]

Notes

For cases on interference by appellate court, see 2(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 946–964.

Cases referred to

Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395 (refd)

Appeal from: Suit No 22–223 of 1990 (High Court, Pualu Pinang)

Tan Swee Cheng (Cheong Wai Meng & Van Buerle) for the appellant.
Surinder Singh Gill (Ong & Manecksha) for the respondents.

Azmel JCA (now FCJ, delivering judgment of the court):

[1] This appeal is similar to another appeal vide Rayuan Sivil No P–02–970 of 2004 involving the same defendant but the plaintiffs are the family members of Dato' Hj Mohd Yussof Latif. The issues involved are exactly the same. It was agreed by all parties that the decision of this court on this appeal would be binding on the other appeal.

[2] The three plaintiffs, (the respondents in this appeal) sought for a declaratory order that the plaintiffs are the respective owners of 2,645,758; 266,812 and 874,744 shares in Palmco Holdings Bhd ('Palmco') respectively held by the defendant (the appellant in this appeal). The plaintiffs also asked that those shares be delivered to them by the defendant.

BACKGROUND OF THE CASE

[3] At the time when Palmco was first listed in 1981 it was run by members of three families namely, the Chan family, Syed Shahabudin family and Yussof Latif family. The members of these three families owned substantial shares of Palmco especially the Chan family. The pioneer directors of Palmco in 1981 were Edmund Chan ('the defendant'), his brother Datuk Robert Chan, Syed Azahari bin Shahabudin ('Syed') and Datuk Hj Mohd Yussof Latif. The three plaintiffs are related to Syed, the first plaintiff being his wife, the second plaintiff, his brother and the third plaintiff, their family company. All the three plaintiffs are shareholders of Palmco.

[4] In June 1984 Palmco declared a rights issue of three shares for every five shares held at RM1 per share. The plaintiffs, by virtue of being shareholders of Palmco were allotted 2,645,758, 266,812 and 874,744 respectively. The directors of Palmco had collectively agreed to subscribe to the full entitlement under the proposed rights issue. In compliance with the arrangement Syed personally handed over the entire allotment documents and the completed Provisional Allotment Letters ('PALs') of the plaintiffs to the defendant who was the managing director of Palmco. This was done through three memos one dated 14 July 1984 and two dated 18 July 1984. The defendant's acknowledgement of receipt of the memos was clearly proved by his signature appearing on each of the three memos.

[5] It was the plaintiffs' claim that the said allotted shares would be returned to the respective plaintiffs upon their acceptance of the same at the price of RM1 per share. Though the plaintiffs on 31 May 1990 had requested the defendant to return the said shares to them the defendant refused to do so.

PLAINTIFF'S CASE

[6] The Chan family, the Syed family and the Yussof Latif family were in control of Palmco. They worked harmoniously and were a close knit corporate unit until the

end of 1989. When the rights issue were declared in June 1984, they were taken up as one collective effort for the benefit of the three families. It was because of this that the allotment documents and PALs were handed to the defendant whose task was to do the needful to achieve the full allotment of the shares. The defendant and the Chan family agreed to source the necessary financial loans and also agreed to pledge their shares on behalf of the plaintiffs. From 1984 to end of 1989 there were regular meetings of the directors of Palmco wherein the Chan family would give details of all the Palmco shares. Any request for payment of interest of the loans from the shareholders for the allotted shares were done by memos from the defendant to Syed from time to time.

[7] The total cost for the purchase of the Palmco rights issue shares for all the shareholders was in the region of RM25.5m and arrangements for repayments were made by the Chan family. The plaintiffs dealt with the defendant who acted on behalf of the Chan family.

DEFENDANT'S CASE

[8] The defendant denied ever receiving the said shares. The defendant also alleged that the plaintiffs never exercised their rights to purchase the rights issue within the stipulated period. The defendant said he merely acted as a 'Post Box' on behalf of his brother Datuk Robert Chan. He denied having knowledge of what happened thereafter or as to who made the financial arrangements. He informed the court that the directors and shareholders made their own personal arrangement to obtain financing for the rights issue.

FINDING OF THE HIGH COURT

[9] The High Court judge arrived at a factual finding that the defendant had received the rights issue shares of the plaintiffs. This was based on the memo from Syed to the defendant dated 30 August 1984. The learned judge also found that the plaintiffs had exercised their rights to purchase the rights issue within the stipulated time on the basis of the same memo.

[10] Based on the facts the learned judge was satisfied that there were financial arrangements made by the Chan family to facilitate the plaintiffs to purchase the said shares. The memo issued by the defendant dated 1 October 1987 was one of the many memos issued by him showing the amount of weekly interest for principle loan, which each shareholder was obliged to pay. The defendant's attempt to explain that that payment of interest was for payment of property loan was totally rejected by the learned judge as there was no documentary evidence to substantiate such allegation.

[11] The defendant's contention that the plaintiffs had not taken up the rights issue through the production of the Renunciation Form signed by the plaintiffs was also rejected by the court. On the other hand the learned judge accepted the explaination given by Syed (PW1) that the Renunciation Form was signed blank.

PW1 explained that it was signed blank by the plaintiffs in order the rights to the said shares could be transferred to the bank nominees as a collateral to facilitate the bank loans.

[12] The production of two letters by the plaintiff had further convinced the learned judge to decide in favour of the plaintiff. The first letter dated 14 January 1985 was from BBL (Nominees) Pte Ltd, Singapore to the first plaintiff. The relevant paragraph of the letter clearly indicates that the first plaintiff did pledge her shares with the said bank. That paragraph states:

> For the purpose of our records, we shall be pleased if you could kindly confirm the outstanding shares pledged with us as at the end of our financial year 31 December 1984.

[13] The said letter went on to state that the amount of the first plaintiff's Palmco shares with the said bank was 2,645,758 shares.

[14] The other letter dated 31 July 1986 was written by first plaintiff to Bangkok Bank Ltd, Singapore. This letter indicates the closeness of the relationship between the Syed family and the Chan family where the dividends derived was to be put in the account of Messrs Robert Steven & Sons (Pte) Ltd.

> Would appreciate if you could claim for me the dividend for the Palmco Holdings Bhd. shares pledged with you in respect of the term loan in the name of Datuk Robert Chan Woot Khoon and Mr Steven Chan Fook Koon. The cheque is to be made out to Messrs Robert Steven & Sons (Pte) Ltd and Mr Allen Ang is authorised to collect the cheque on our behalf.

[15] On the basis of these two letters it was very apparent regarding the involvement of the Syed and the Chan families on the loans taken from the bank. The learned judge became quite convinced that the first plaintiff was entitled to the said shares which members of the Chan family had pledged for their own use or for the use of the first plaintiff. The defendant's explanation as to the purpose of these letters was found to be unsatisfactory by the learned judge. The defendant's explanation that the loans were in respect of properties was found to be unacceptable by the judge.

[16] On the defendant's contention that he merely acted as a 'Post Box' on behalf of his brother Datuk Robert Chan and as such he had no knowledge of the transaction the learned judge dismissed it as being against the weight of evidence. Furthermore Datuk Robert Chan, who was throughout present in court, was not called to give evidence to support the defendant's contention.

[17] The learned judge said that he was satisfied that the said shares had been handed over by the plaintiffs to the defendant. But he could not find any evidence whatsoever to show that those shares were handed back to the plaintiffs respectively.

In the circumstances the learned judge accordingly gave judgment in favour of the plaintiff. Against that decision the defendant appealed to this court.

FINDING OF THIS COURT

[18] The issues in this appeal are purely based on facts. It is trite law that the appellate court would not readily interfere with the findings of facts arrived at by the court of first instance to which the law entrusts the primary task of evaluation of the evidence (see the case of *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395).

[19] As commented by the learned judge this case is 'simple and uncomplicated', and we totally agree with him. After having carefully scrutinized the facts and circumstances of this case vis-à-vis the findings of facts of the learned Judge we arrived at the conclusion that his decision should not be disturbed. The plaintiffs' claim against the defendant had been sufficiently substantiated by documentary evidence while the defendant's defence was a bare denial without any document to support it. The defendant's attempt to discredit PW1's evidence and the documents he produced had been correctly rejected by the learned Judge.

[20] In the light of the circumstances as mentioned above we dismiss the defendant's appeal with costs. Deposit is to be paid to the plaintiffs/ respondents to account of taxed costs. My learned brothers, Denis Ong and Tengku Baharudin Shah JJCA have seen this judgment in the draft and have expressed their agreement with it.

Appeal dismissed with costs.

Reported by Loo Lai Mee